

MINUTES

July 11, 2006

MEETING CALLED TO ORDER

The Joint Committee on Administrative Rules met on July 11, 2006 at 10:30 a.m. in Room 16-503 of the James R. Thompson Center in Chicago.

Co-Chair Hassert announced that the policy of the Committee is to allow only representatives of State agencies to testify orally on any rule under consideration at Committee hearings. Other persons are encouraged to submit their comments in writing.

ATTENDANCE ROLL CALL

X Senator Bradley Burzynski	X Representative Brent Hassert
X Senator James Clayborne, Jr.	X Representative Tom Holbrook
X Senator Maggie Crotty	X Representative David Leitch
X Senator Steve Rauschenberger	X Representative Larry McKeon
X Senator Dan Rutherford	X Representative David Miller
X Senator Ira Silverstein	X Representative Rosemary Mulligan

APPROVAL OF THE PREVIOUS JCAR MEETING MINUTES

Representative Mulligan moved, seconded by Representative Miller, to approve the minutes of the June 13, 2006 meeting. The motion passed unanimously.

REVIEW OF PROPOSED RULEMAKINGS

Department of Agriculture – Livestock Auction Markets (8 Ill. Adm. Code 40; 30 Ill. Reg. 713)

Senator Rutherford moved, seconded by Senator Burzynski, that JCAR object to the rulemaking because, by allowing livestock testing positive for brucellosis at market to be returned to their point of origin, the rulemaking conflicts with Section 5 of the Illinois Bovine Brucellosis Eradication Act and with 8 Ill. Adm. Code 85.40 (Diseased Animals). If the Department believes that allowing these animals to be returned to the point of origin is advisable, it should seek an amendment to the statute allowing this option. The motion passed unanimously.

Department of Agriculture – Diseased Animals (8 Ill. Adm. Code 85; 30 Ill. Reg. 737)

Representative Mulligan moved, seconded by Representative Holbrook, that JCAR object to the Department of Agriculture enforcing policy not in rule by requiring, for over a year, dog breeders and veterinarians to report canine brucellosis, a disease not listed by DOA as reportable, and by requiring dog breeders to meet specified criteria for release from quarantine without statutorily required rules. The motion passed unanimously.

Children and Family Services – Licensing Standards for Day Care Homes (89 Ill. Adm. Code 406; 29 Ill. Reg. 18180) and Licensing Standards for Group Day Care Homes (89 Ill. Adm. Code 408; 29 Ill. Reg. 18207)

Representative Leitch moved, seconded by Senator Burzynski, that JCAR recommend that, when DCFS and OSFM develop the fire prevention checklist for use in day care homes and group day care homes, it codify that checklist in these Parts. The Recommendation was adopted unanimously.

Senator Rauschenberger stated that, since this rulemaking was extended at the June meeting, the only way to now delay action on the rulemaking is to issue a Filing Prohibition. The Department and JCAR can work on clearer rule language, particularly with respect to the relationship between agency licensure and adherence to local ordinances, in anticipation that this issue can be resolved by the next JCAR meeting. Senator Rauschenberger further moved, seconded by Senator Rutherford, that JCAR object to and prohibit the filing of these rulemakings because the rulemakings lack clarity, which threatens the public interest in that applicants/licensees and the families they serve could be adversely economically impacted. At the June JCAR meeting, discussions with DCFS personnel suggested that the Department was unclear about the relationship between State licensure and the authority of local fire prevention agencies and whether the role of the State and local authorities is clearly and accurately described in the proposed rulemaking. Since that meeting, DCFS has provided no further information to clarify this dichotomy. As a result, adoption of the rulemaking constitutes a potential threat to the interest and welfare of applicants and licensees, as they could be misled about operating requirements and be negatively impacted. The general public could also be impacted by any resulting unavailability of child care options. The second motion passed on a vote of 11-0-0 (Senator Silverstein was not present when the vote was recorded).

Health Facilities Planning Board – Health Facilities Planning Procedural Rules (77 Ill. Adm. Code 1130; 29 Ill. Reg. 16173)

Senator Crotty moved, seconded by Representative McKeon, that JCAR object to HFPB's failure to review its rules and promulgate amendments before December 31, 2004, as required by PA 93-41. Additionally, JCAR objects to Section 1130.640 of the rulemaking that allows DPH to extend by 60 days the 120 day time limit on its review of a permit request. Section 8 of the Illinois Health Facilities Plan Act [20 ILCS 3960/8] allows only the permit applicant, not DPH, to seek an extension of the statutory 120 day cap on the review period. If HFPB believes more time is needed for these reviews, it should seek a statutory change. The motion passed unanimously.

Department of Transportation – Control of Outdoor Advertising Adjacent to Primary and Interstate Highways (92 Ill. Adm. Code 522; 30 Ill. Reg. 6125)

Representative Miller moved, seconded by Representative Mulligan, that JCAR and the Department of Transportation agree to extend the Second Notice period for the rulemaking titled Control of Outdoor Advertising Adjacent to Primary and Interstate Highways (92 Ill. Adm.

Code 522; 30 Ill. Reg. 6125) for an additional 45 days to allow the Department time to respond to JCAR questions and address late public comment. The motion passed unanimously.

Co-Chair Hassert asked if any member wished to remove any rulemakings from the No Objection List. Senator Rauschenberger requested that the following rulemaking be removed for the purpose of discussion.

Department of Financial and Professional Regulation – Consumer Installment Loan Act (38 Ill. Adm. Code 110; 30 Ill. Reg. 2449)

Senator Rauschenberger stated that, while JCAR appreciates the work DFPR has done in seeking a compromise on this issue, the Committee is still not comfortable with the rulemaking as presently written. The Committee is concerned that the rulemaking may exceed the Department's statutory authority and questions whether the proposal actually gets at the problem DFPR is attempting to address. A Filing Prohibition would allow more time for work on these issues. Senator Rauschenberger moved, seconded by Senator Rutherford, that JCAR object to and prohibit the filing of the Department of Financial and Professional Regulation's rulemaking titled Consumer Installment Loan Act (38 Ill. Adm. Code 110; 30 Ill. Reg. 2449) because DFPR's application of Payday Loan Reform Act restrictions to Consumer Installment Loan Act licensees is not specifically authorized by statute and contravenes the General Assembly's intent in creating the Payday Loan Reform Act, the Consumer Installment Loan Act and the Illinois Wage Assignment Act. This significant violation of statute poses a threat to the public interest.

Secretary Dean Martinez represented DFPR.

Representative Miller asked Secretary Martinez for his thoughts on Senator Rauschenberger's motion.

Secretary Martinez introduced Gina DeCiani, the Acting Director of DFPR-DFI, and Susan Gold, Acting Deputy General Council for DFI. He then asked to make some remarks. Over the past few years, the Governor and the General Assembly have worked hard to make short term loans safer and fairer for consumers. Currently, Illinois consumers find themselves in a lending environment that is so confusing that they virtually need to be a lawyer to determine what loan products are available. They need to determine whether they are getting a payday loan product and receiving all the protections the General Assembly has mandated, or receiving a short term installment loan that includes no protections whatsoever. CILA lenders are now disguising products as a CILA loan that in fact are not traditional CILA loans. DFPR sees loans for \$275 for which the consumer ends up paying \$2700. They see loans of over 1000% interest. These loans are not limited to the Chicago area; some have been found in Elgin, for example. The proposed rulemaking would incorporate necessary consumer protections within CILA rules. The rulemaking would restrict CILA lenders from threatening criminal action to procure loan payment; prohibit oppressive arbitration agreements and other oppressive collection procedures; and include protections for military borrowers. These are not concerns limited to Illinois. Recently 2 U.S. Senators passed an amendment to a military authorization bill to limit payday loan collection practices against military personnel, using 36%....

Co-Chair Hassert requested that Secretary Martinez summarize his points as the Committee's time is limited. Secretary Martinez agreed.

Senator Rauschenberger and Representative Leitch interjected that they would like Secretary Martinez to answer the question of whether a compromise is reasonably forthcoming. Senator Rauschenberger indicated that he does not know what the progress toward compromise on this issue has been because no one from the Department had informed him or explained in person what the Department is trying to accomplish. The proposed Filing Prohibition would provide at least 30 more days for this kind of activity to occur. He would prefer the agency trying to get the rule right more than a political speech.

Secretary Martinez said he would respond to the question about statutory authority. Representative Miller pointed out that some of the Secretary's historical information is helpful to the members. Senator Rauschenberger said that a better approach would be to contact JCAR members individually to be sure they understand the Department's proposal.

Secretary Martinez said the Department would not object to waiting another 30 days, but that the strategy of those who do not want these consumer protections to occur is to confuse the issues. That's why he wants to address 4 major myths. This can be done privately or before everyone who is here today. The Secretary offered to personally meet with each of the JCAR members if they would like. While the Department can wait another 30 days, it wants to move quickly on these consumer protection provisions because the lending environment that exists today is actually worse than the environment that existed prior to passage of the Payday Loan Reform Act (PLRA).

Representative Miller added that delay is a tactic that had also been historically used. He asked that Secretary Martinez continue to address the question of statutory authority.

Secretary Martinez assented and indicated that he has previously faxed to JCAR members a summary of the Department's authority. Under the Consumer Installment Loan Act, DFPR has the right to issue rules to protect consumers. The rule before JCAR today, including a compromise suggested by Representative Miller, will protect consumers. This issue has been the subject of a court action, and the appellate court (*South 51 v. Vega*) determined that DFPR has authority to issue rules in this regard.

Representative Miller said there are one or two groups that were not happy with creation of PLRA and will not be pleased with any rule that results from this discussion. Secretary Martinez concurred and added that it is DFPR's experience that the intent of the PLRA was to allow CILA lenders to continue to offer traditional CILA products, and individuals who want to offer payday loan products to do so in accordance with PLRA.

Representative Miller said some JCAR members are concerned with the clarity of the DFPR proposal. Some members had heard something of the compromise, others had not. That is why some of the members want to delay action at this time.

Co-Chair Hassert asked that Senator Silverstein be added to the attendance rollcall.

Representative Mulligan stated that she is not against the substance of the rule, but is concerned with the statutory authority. She said that she does believe that the affected industry has called an inordinate amount of attention to itself, which is not advisable. The proponents of the rule have some very good points. Consumers who seek these loans in an emergency situation frequently have few choices and do not have the ability to determine whether these are fair loans. The industry is asking for trouble when it uses a loophole to take advantage of the poor. She encouraged the parties to enter a compromise that would preserve the intent of the rulemaking without raising major questions of statutory authority.

Senator Silverstein expressed concern that DFPR is attempting to paint JCAR members as anti-consumer, which is far from the truth. More questions need to be answered. The Senator stated that, in a prior conversation, he had questioned Secretary Martinez as to whether what he is trying to accomplish should be done through the legislative process. Senator Silverstein does not see the harm in delaying action for 30 days to achieve more clarity, so that JCAR is also comfortable with the proposal, thereby preserving constitutional checks and balances.

Secretary Martinez said he apologizes if he seemed to be claiming that JCAR members are anti-consumer. Every JCAR member voted for the PLRA.

Senator Silverstein said plaintiffs had already procured a TRO against the Department for acting without due authority and it's likely the same will happen with this proposal unless we act in a logical and constitutional way.

Secretary Martinez reiterated that the Department does not object to the delay and stated that he will be available during the delay to be sure each member's questions are answered.

Senator Rauschenberger stated that JCAR has been frustrated by numerous actions by administrative agencies that appear to ignore and exceed statutory authority. The General Assembly makes law in the State of Illinois, not administrative agencies, even if they are well intended.

Representative Leitch asked for the details of the proposed compromise.

Secretary Martinez said it is his understanding that Representative Miller is working on a proposed compromise and that the Department will work with the Representative.

Representative McKeon pointed out that his role as a JCAR member is to determine that the rulemaking addresses the intent of the legislature and is within its statutory authority. He has experienced too many instances in which a proposal fails before the General Assembly and then re-appears in a rulemaking attempt. He resents that. He is supporting the Prohibition because, while he supports most of the substance of the rulemaking, he is not sure that the agency is acting within its statutory authority. He found Secretary Martinez's opening remarks insulting in that they insinuated that JCAR members have no concern for consumers. The agency has an obligation to come back to the General Assembly to get any authority that it needs but does not have. The problem is not just with this rule, but with a number of proposals this Administration

has offered over the past 2-3 years. The issue is not with the merits of the rule, but with the adequacy of the rule and the process. That is how this Committee differs from every other committee of the General Assembly.

Secretary Martinez again apologized, stating that his intent was to share with the Committee some historical background on how we've gotten to where we are today. He understands some of the concerns the Committee has with the Administration with respect to past attempts at rulemaking. In regard to statutory authority, the Secretary referred to a previous rulemaking, offered by a prior Administration, in which the appellate court found that the Department has the authority to adopt rules under CILA to protect consumers.

Senator Clayborne asked for clarification that the Secretary accepts the Prohibition. Secretary Martinez responded that it is not so much an issue of his acceptance as that, if it is voted, the delay will allow further work on this rulemaking. He reiterated that he is willing to continue working on a compromise.

Secretary Crotty commented that some lenders are also trying to do an end run around the General Assembly.

Representative Miller said he understands the Secretary's frustration, but hopefully we can continue to move forward. In anticipation of future consideration of this issue, he asked that the Secretary send a copy of his written statement about the Department's perceived statutory authority to the JCAR members. Representative Miller said he does not know whether the anticipated compromise will be achieved and stated that he is willing to vote for the proposal as it stands today.

Co-Chair Hassert stated that this issue needs to be put to rest by the next JCAR meeting and asked for a rollcall on the motion to Object and Prohibit Filing. The motion passed 9-3-0 (No: Crotty, Clayborne, Miller).

AGENCY RESPONSES

SPECIAL RESPONSES TO JCAR INQUIRIES:

Office of the State Fire Marshal/Elevator Safety Review Board

JCAR had inquired as to the Board's plans to adopt rules and OSFM's plans to implement the Elevator Safety and Regulation Act. OSFM responded that emergency rules would be adopted, but no emergency rules have yet been adopted. Senator Crotty moved, seconded by Representative Miller, that JCAR recommend that the Board immediately adopt emergency rules to implement the Elevator Safety and Regulation Act and that the State Fire Marshal take the necessary measures to make this program workable. The motion passed unanimously.

Department of Public Health

JCAR had asked DPH to state its intentions with respect to rules to implement stem cell research

grants. The agency responded that it would not be adopting rules. Senator Rauschenberger moved, seconded by Senator Burzynski, that JCAR object to the Department of Public Health awarding grants to medical research facilities for stem cell research without adopting rules addressing eligibility requirements, application procedure, monitoring criteria and other general program standards. The grant process affects individuals outside the Department, thus rulemaking is required under the Illinois Administrative Procedure Act. Senator Rauschenberger pointed out that this is consistent with longstanding JCAR policy that rules are necessary for grant programs. The stem cell grants have already been issued and JCAR is not arguing that, but the Committee wants to put State agencies on notice that it will object strenuously in the future to agencies enforcing programs without rules.

Representative McKeon stated that he does not want anyone to be misled by the fact that the Objection addresses one agency's actions with respect to one set of grants. The Committee's concern is with all agencies that might attempt to issue grants without rules. He has a particular interest in forthcoming AIDS related grants. Senator Rauschenberger concurred that no agency has the right to unilaterally grant public monies to entities outside its agency without adoption of clear rules establishing grant guidelines. Whether the subject is AIDS grants, other medical research grants, or other types of grants, the rulemaking process must be followed.

The motion passed unanimously.

The Committee took no further action with respect to appropriate responses from the Departments of Healthcare and Family Services and Central Management Services that they expect to propose State Employee Group Insurance rules by 9/1/06, and from the State Board of Education stating that it would propose rules governing arts education and foreign language grants by mid-July.

RESPONSES TO JCAR RULEMAKING ACTIONS:

Department of Financial and Professional Regulation – Real Estate License Act (68 Ill. Adm. Code 1450; 29 Ill. Reg. 17959)

Representative Miller moved, second by Representative Mulligan, that the Committee publish a Notice of Failure to Remedy. The motion passed unanimously.

Department of Human Services – Crisis Assistance (89 Ill. Adm. Code 116; 30 Ill. Reg. 1907) (Emergency) and Food Stamps (89 Ill. Adm. Code 121; 29 Ill. Reg. 16344)

Based on the appropriateness of the agency's responses, no further action was taken.

CERTIFICATION OF NO OBJECTION

Senator Clayborne moved, seconded by Representative Leitch, that the Committee inform the agencies to whose rulemakings the Committee did not vote an Objection, or did not remove from the No Objection List, that the Committee considered their respective rulemakings at the

monthly meeting and, based on the Agreements for modification of the rulemakings made by the agencies, no Objections will be issued. The motion passed unanimously.

AUGUST MEETING DATE

Co-Chair Hassert announced that the next JCAR meeting is scheduled for August 8, 2006, 10:30 a.m., Room 16-503 of the James R. Thompson Center in Chicago.

ADJOURNMENT

Senator Crotty moved, seconded by Representative Mulligan, to adjourn the meeting. The motion passed unanimously.

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